



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 20, 2017

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2017-10

Victor S. Tiffany  
Citizens Against Plutocracy  
1540 Danby Road  
Ithaca, NY 14850

Dear Mr. Tiffany:

We are responding to your advisory opinion request on behalf of Citizens Against Plutocracy concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the "Act"), and Commission regulations to your proposal to ask candidates for federal office to sign a "Contract for American Renewal." The Commission concludes that the proposed activities would not constitute a coordinated communication with a candidate.

***Background***

The facts presented in this advisory opinion are based on your advisory opinion request ("AOR") received on August 2, 2017, and your email dated August 23, 2017 ("AOR Supplement").

Citizens Against Plutocracy (the "Committee") is an independent expenditure-only political committee registered with the Commission. Advisory Opinion Request at AOR001. The Committee has developed a document it calls a Contract for American Renewal (the "Contract"), which it plans to make available for candidates to sign. The Contract includes a list of specific issues on which candidates would commit to take legislative action if elected. AOR003. The specific issues in each Contract are negotiable; the Committee will encourage candidates to remove policy positions or add issues of particular relevance to the candidates and their constituents. AOR002. The Committee proposes to include signed Contracts in emails to potential or current supporters or to place them on the Committee's website and to encourage voters via email and social media to pledge support to the candidates that signed them. AOR001-02. In asking a candidate to sign a Contract, the Committee will explain that it is "building a movement of voters who will only vote for candidates who have signed a

[Contract].” AOR002. The Committee will not discuss with a candidate whether or how it will spend money or whether it will set up additional political committees. *Id.* The Committee may run advertisements in support of or in opposition to a candidate, but it has no current plans to communicate with any candidate, at any time, about any advertisements that it may run, or other public communications that it may make. AOR Supplement. Moreover, upon signing a contract with a candidate, the Committee will cease all communication with that candidate and the candidate’s campaign. AOR002.

### ***Question Presented<sup>1</sup>***

*Would Citizens Against Plutocracy’s proposal to ask candidates to sign a Contract constitute a coordinated communication?*

### ***Legal Analysis and Conclusion***

No, the Committee’s proposal to ask candidates to sign a Contract would not constitute a coordinated communication.

Under the Act, expenditures that are coordinated with a candidate or political party committee are treated as contributions to that candidate or political party committee. 52 U.S.C. § 30116(a)(7)(B). More specifically, Commission regulations provide that a payment for a communication “coordinated with a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing” is an in-kind contribution to the candidate or the political party committee. 11 C.F.R. § 109.21(a), (b)(1). An independent expenditure-only political committee “may not make contributions to candidates or political party committees, including in-kind contributions such as coordinated communications.” Advisory Opinion 2016-21 (Great America PAC) at 3-4 (citing Press Release, FEC Statement on *Carey v. FEC* Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011), <https://www.fec.gov/updates/fec-statement-on-carey-fec>, concerning hybrid committees maintaining independent expenditure-only accounts); *see also* Advisory Opinion 2010-11 (Commonsense Ten) at 3 (stating that independent expenditure-only committee may receive unlimited funds and funds from corporations and labor organizations).

To determine whether a communication constitutes a “coordinated communication,” Commission regulations apply a three-prong test. 11 C.F.R. § 109.21(a). Under that test, a communication must satisfy a “content prong,” it must satisfy a “conduct prong,” and it must be paid for, in whole or in part, by a person other than the candidate committee or political party committee (the “payment prong”). 11 C.F.R. § 109.21(a), (c), (d). Under the regulations, a communication must satisfy all three prongs to be deemed a “coordinated communication.”

The Committee’s proposal does not satisfy the content prong of the coordinated

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<sup>1</sup> The Committee also asks about the permissibility of the activities of “movement activists,” who would “follow[] in [the Committee’s] footsteps.” AOR002. To the extent that the activists’ activities are indistinguishable in all material aspects from the activity with respect to which this advisory opinion is rendered, they may rely on the Commission’s conclusions in this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B).

communications test. Commission regulations provide that a communication satisfies the content prong if it is an electioneering communication under 11 C.F.R. § 100.29. 11 C.F.R. § 109.21(c)(1). An electioneering communication is “any broadcast, cable, or satellite communication” that refers to a clearly identified candidate for federal office, is publicly distributed within certain timeframes, and, in the case of a candidate for the United States Senate or House of Representatives, is targeted to the relevant electorate. 11 C.F.R. § 100.29(a). The Committee’s proposal to encourage candidates to sign a Contract concerning their legislative positions, and to place those Contracts on its website or email the Contracts to current or potential supporters, would not constitute an electioneering communication.

Commission regulations further provide that certain “public communications,” as that term is defined at 11 C.F.R. § 100.26, also satisfy the content prong. 11 C.F.R. § 109.21(c)(2)-(5). A public communication is “a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.” 11 C.F.R. § 100.26. “General public political advertising” specifically excludes communications over the Internet, except for communications placed for a fee on another person’s website. *Id.* The Committee’s proposed use of the Contracts would not constitute public communications.

Because the Committee’s proposed use of the Contracts would not constitute electioneering communications or public communications, the Committee’s proposed activities do not meet the content prong of the coordinated communications test. The Commission concludes that the Committee’s proposed activities, as described in the request, would not constitute coordinated communications under the Act or Commission regulations.<sup>2</sup>

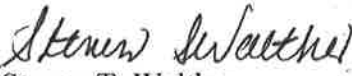
This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes,

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<sup>2</sup> The Commission notes that “[a] candidate’s . . . response to an inquiry about that candidate’s . . . positions on legislative or policy issues, but not including a discussion of campaign plans, projects, activities, or needs, does not satisfy any of the conduct standards in paragraph (d) of [11 C.F.R. § 109.21].” 11 C.F.R. § 109.21(f).

regulations, advisory opinions, and case law. The advisory opinion cited herein is available on the Commission's website.

On behalf of the Commission,

  
Steven T. Walther,  
Chairman